

**REMARKS**

Claims 1-4 are pending in the above-identified application. Claims 1-4 were rejected.

With this Amendment, claims 1-3 were amended, claims 5-8 were added and claim 4 was cancelled. Accordingly, claims 1-3 and 5-8 are at issue in the above-identified application.

**35 U.S.C. § 103 Obviousness Rejection of Claims**

Claims 1-4 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Olsen* (U.S. Publication No. 2004/0175961) or *Kraus et al.* (U.S. Publication No. 2004/0242021).

Claims 1-4 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Visokay et al.* (U.S. Patent No. 6,821,873). Applicants respectfully traverse these rejections.

First, Applicants submit that *Olsen* and *Kraus* are not prior art to the present application. The present application claims priority to Japanese Application No. P2003-035940, which was filed on February 14, 2003. The provision application in *Olsen* was filed on March 7, 2003. The provisional application in *Kraus* was filed on May 28, 2003. Accordingly, neither *Olsen* nor *Kraus* can be considered prior art under 35 U.S.C. § 103(a).

With respect to *Visokay*, Applicants respectfully submit that the *Visokay* does not disclose "performing a first anneal of said gate insulating film in an atmosphere containing oxygen; and performing a second anneal of said gate insulating film in an inert atmosphere after the first anneal", as recited in claim 1. In fact, *Visokay* specifically teaches away from this invention as it requires an anneal in an non-oxidizing ambient to be performed before an anneal in an oxidizing ambient. (Col. 2, line 46 - Col. 3, line 4). In the office action, the Examiner admits that *Visokay* does not disclose the claimed order of the annealing steps, but instead asserts that "it would have been obvious to one with ordinary skilled in the art to apply two annealing

steps in the foregoing order or in the reversed order because it is expected to have similar results in both ways." Applicants respectfully disagree.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. (MPEP Section 706.02(j)).

Applicants submit that the Examiner has not identified any requisite motivation to modify the steps taught by *Visokay*, and that in fact no such motivation exists. As mentioned above, *Visokay* is very explicit that an anneal in an non-oxidizing ambient is to be performed before an anneal in an oxidizing ambient. *Visokay* does not provide any suggestion that the steps may be performed in a different order. The Examiner also does not provide any prior art reference that suggests that one skilled in the art would believe that performing these annealing steps in a different order would yield the same result. Accordingly, Applicant submits that claim 1, as well as dependent claims 2, 3, and 5-8 are not obvious in view of *Visokay*.

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In view of the foregoing, Applicants submit that the application is in condition for allowance. Notice to that effect is requested.

Respectfully submitted,

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Dated: January 31, 2006